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SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 867

JOHN HOLLMAN ..... *Petitioner*

vs.

THE STATE OF ARKANSAS ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF ARKANSAS

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. ———

JOHN HOLLMAN ..... *Petitioner*

vs.

THE STATE OF ARKANSAS ..... *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

Petitioner, John Hollman, prays that a Writ of Certiorari issue to review the decision of the Supreme Court of Arkansas, of November 5, 1962, and the denial of a rehearing thereon on December 3, 1962, which decision affirmed the judgment of the Circuit Court of Pulaski County, Arkansas, entered February 26, 1962.

OPINION BELOW

The opinion of the Supreme Court of Arkansas sought to be reviewed herein is officially reported in the Arkansas Law Reporter of November 5, 1962, No. 14, 235 Arkansas, 662, ——S. W. (2d) ——, and the opinion is reprinted in the Appendix to this Petition.

JURISDICTION

The final judgment of the Circuit Court of Pulaski County, Arkansas, was entered February 26, 1962, (R. 18). That judgment was affirmed by the Supreme Court of Arkansas on November 5, 1962, (R. 73). On Nov. 19, 1962 Petitioner filed Petition and Brief for Re-Hearing before the Supreme Court of Arkansas, (R. 74-75), and on December 3, 1962, the Petition for Re-Hearing was denied (R. 76). The jurisdiction of this Court is invoked under *U.S.C. Anno. Sec.* 1257 (3).

QUESTIONS PRESENTED

There are three questions presented here for decision:

I.

Whether Petitioner's detention, and the judgment entered against him, was in violation of the Due Process Clause of the 14th Amendment to the Constitution of the United States of America, and the Due Process Clause of Article 2, Section 8, of the Constitution of the State of Arkansas.

II.

Whether Petitioner was denied the rights secured to him under Sections 43-601 and 43-605 of the Arkansas Statutes, 1947, Annotated.

III.

Whether the confessions obtained from appellant were inadmissible as a result of the total combination of coercive circumstances and whether the so-called original confession was made under such illegal influence as

will be presumed to color and invalidate the so-called second confession.

CONSTITUTIONAL PROVISIONS

The Due Process Clause of Section I. Fourteenth Amendment to the Constitution of the United States, provides:

> "* * *. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Due Process Clause of Article 2, Section 8, of the Constitution of the State of Arkansas, provides:

> "* * *; nor shall any person be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great."

STATUTES INVOLVED

Section 43-601 of the Arkansas Statutes, 1947, Annotated, provides:

> "43-601. Proceeding when no warrant issued. — Where an arrest is made without a warrant, whether by a peace officer or private person, the defendant shall be forthwith carried before the most convenient magistrate of the county in which the arrest is

made, and the grounds on which the arrest was made shall be stated to the magistrate, and if the offense for which the arrest was made is charged to have been committed in a different county from that in which the arrest was made, and the magistrate believes, from the statements made to him on oath, that there are sufficient grounds for an examination, he shall, by his written order, commit the defendant to a peace officer, to be conveyed by him before a magistrate of the county in which the offense is charged to have been committed; or, if the offense is a misdemeanor only, the defendant may give bail before the magistrate for appearing before a court or magistrate having jurisdiction to try the offense, on a day to be fixed by the magistrate and named in the bail-bond. (Crim. Code, § 43; C. & M. Dig. 2913; Pope's Dig. § 3729.)"

Section 43-605, Arkansas Statutes, 1947, Annotated, provides:

"43-605. Procedure. — When a person, who has been arrested, shall be brought, or in pursuance of a bail-bond shall come, before a magistrate of the county in which the offense is charged to have been committed, the charge shall be forthwith examined; reasonable time, however, being allowed for procuring counsel and the attendance of witnesses. The magistrate before commencing the examination, shall state the charge and inquire of the defendant whether he desires the aid of counsel, and shall allow a reasonable opportunity for procuring it. (Crim. Code, § 47; C. & M. Dig., § 2918; Pope's Dig. § 3734.)"

STATEMENT

On October 27, 1958, a window of the Timberland Saw Company was broken and ten chain saws were removed. Each saw cost in excess of $100.00, all the property of Timberland Saw Company.

Petitioner, John Hollman, was picked up by Officer Munns of the North Little Rock Police Department on October 27, 1958, without a warrant on suspicion of receiving stolen property, no charge was placed against him, and he was held for about an hour and a half, and released.

Three days later, October 30, 1958, Petitioner was picked up again by officers, without a warrant. He was not told what the charges were against him. He was not taken before a magistrate; was not advised of his right to counsel of his own choosing, or permitted to call counsel, his wife, or anyone else. He was not told that before he said anything he had the right to advice of counsel, and he was held in jail, incommunicado until November 6, 1958.

Shortly after he was placed in jail, and after he had been picked up the second time, Petitioner was taken to the police station where one Jerome Wells, the person accused of the actual theft of the saws, was brought in. Wells was all swollen up and showed signs of having been beaten, and he told Petitioner, "If you don't tell them they are going to give you the same thing they gave me." The officers pulled out their blackjacks and officer Munns hit the table with his and said, "That's right."

Those are the circumstances under which the first alleged confession was secured.

Petitioner was held in jail, incommunicado, without counsel, advisor, or friend; without a charge being placed against him, and without bail from October 30, 1958, until November 6, 1958, and until the officers' investigation was completed, a period of seven days.

During this period he asked for permission to call his own lawyer, but was refused. He was told by the officers he would have an attorney when the time came.

Not until November 5, 1958, was information filed against Petitioner by the Prosecuting Attorney's office, charging him with the offense of receiving stolen property; warrant was issued for his arrest on the same day and served on him in the county jail on November 6, 1958. Bail-bond, in the sum of $10,000.00 was fixed on that day.

Ray Blankenship, a practicing attorney, who was formerly a policeman with the North Little Rock Police Department, then showed up at detective headquarters and the officers told Petitioner that this was his attorney. This was the first time Petitioner had ever seen, or known, Mr. Blankenship. He did not ask for Blankenship, nor did he have any consultations with him.

From there the officers, together with Mr. Blankenship, took Petitioner directly over to the Prosecuting Attorney's office and while there, Petitioner told Blankenship that he "wasn't a witness to that" and Blankenship told him, "Go on ahead—that's the only way you are going to get out of it."

Those are the circumstances under which the second alleged confession was secured.

Then, and not until then, was Petitioner permitted to make bond.

On January 5, 1959, Petitioner was arraigned before the Hon. William J. Kirby, Judge of the Pulaski County, Arkansas, Circuit Court, and entered a plea of not guilty; and on February 26, 1959, he was tried before the court sitting as a jury, found guilty as charged, and sentenced to ten years in the penitentiary. (R. 18)

Motion for New Trial was filed, heard, and overruled and appeal bond fixed at $10,000.00. (R. 21-23)

Petitioner appealed to the Supreme Court of Arkansas, where his conviction was affirmed. He then filed his Petition for Re-Hearing before the Supreme Court and this was denied. (See Appendix)

The constitutional questions involved here were raised by Petitioner in the Pulaski County Circuit Court where he made timely objections and exceptions to the introduction of any evidence with reference to the so-called confessions and also raised the question of his illegal detention. (R. 30 & 37)

At the conclusion of the state's evidence in the Circuit Court, Petitioner, through counsel he had employed after his release from jail, moved for an instructed verdict, contending,

> "* * * and because of the undisputed manner in which the defendant was incarcerated and held in jail for a number of days without being told that he had a right to have legal counsel of his own choice, and without being shown what his legal rights were and held in jail without due process of law. For this

reason I think the state has failed to make a case. * * I think I am entitled to an instructed verdict of not guilty." (R. 51-52)

Motion for instructed verdict overruled and exceptions saved. (R. 52)

Motion for New Trial filed and denied. (R. 21-23)

The constitutional questions were raised, and argued, in his appeal to the Supreme Court of Arkansas, and were considered by that Court. In its opinion affirming the judgment of the Circuit Court, the Supreme Court of Arkansas said:

"* * * For reversal he contends that his confession of the crime was involuntary and that its introduction in evidence by the State violated his rights under the due process clause of the Fourteenth Amendment. (See Arkansas Supreme Court opinion, Appendix.)"

Petitioner is here on Petition for Writ of Certiorari asking for a review of the decision of the Supreme Court of Arkansas, which decision affirmed the judgment of the Pulaski County Circuit Court, for errors which he contends were committed in the trial of said cause and in the affirmance of the judgment by the Supreme Court of Arkansas.

REASONS FOR GRANTING

I.

The decision of the Supreme Court of Arkansas in the instant case, and in *Stein vs. New York*, 346 U. S. 156 and *United States vs. Mitchell*, 322 U. S. 65, cited as authorities by the Court below as sustaining its decision, are in direct conflict with this court's decisions in *Payne vs. Arkansas*, 356 U. S. 560; *Mallory vs. United States*, 354 U. S. 449; *Brown vs. Mississippi*, 297 U. S. 278; *Chambers vs. Florida*, 309 U. S. 227; *Lisenda vs. California*, 314 U. S. 219; *Ashcraft vs. Tennessee*, 322 U. S. 143; *Malinski vs. New York*, 324 U. S. 401; *Turner vs. Pennsylvania*, 338 Ark. 62; *Haley vs. Ohio*, 332 U. S. 596; *Watts vs. Indiana*, 338 U. S. 49; *Stroble vs. California*, 343 U. S. 181; *Leyra vs. Denno*, 347 U. S. 556; *Fisk vs. Alabama*, 352 U. S. 191; and *Ward vs. Texas*, 316 U. S. 547.

The lower court failed completely to take into consideration the total combination of coercive circumstances present in the instant case, and as specifically set forth in *Payne vs. Arkansas*, 356 U. S. 560, at Page 563.

The lower court, in its opinion in the instant case, also cites the case of *Haley vs. Ohio*, 332 U. S. 596. *Haley vs. Ohio, supra*, is cited as authority by this court as sustaining the principles laid down in *Payne vs. Arkansas*, 356 U. S. 560, and Petitioner contends that it sustains his position herein in every respect, as do the decisions handed down by this Court and cited in the first paragraph herein.

The lower court relied upon the case of *Stein vs. New York*, 346 U. S. 156, to sustain its holding that the fact

that Petitioner was uncounseled and illegally detained, does not render his confession illegal.

This Court, in Footnote No. 15, page 568, of its opinion in *Payne vs. Arkansas*, 356 U. S. 560, holds that *Stein vs. New York*, 346 U. S. 156, is not to the contrary to its decisions in *Watts vs. Indiana*, 338 U. S. 49, at 50; *Malinski vs. New York*, 324 U. S. 401, at 404; and *Lyons vs. Oklahoma*, 322 U. S. 596 at 597, for the reason that this court, in *Stein vs. New York, supra*, did not find that the confession was coerced.

The case of *United States vs. Mitchell*, 322 U. S. 65, is cited by the Supreme Court of Arkansas, in its opinion in the instant case, as its authority for holding that illegal detention of Petitioner for seven days while the police investigated other thefts, did not affect the admissibility of his first confession.

The case of *United States vs. Mitchell, supra*, is not applicable in the instant case. In that case the defendant's confession was voluntary, and the police were investigating other thefts that had been disclosed to them by the defendant.

II.

Section 43-601 of the Arkansas Statutes, annotated, provides that when an arrest is made without a warrant, the defendant shall be forthwith carried before the most convenient magistrate of the county and the grounds on which the arrest is made shall be stated to the magistrate. (P. 3 & 4).

Section 43-605 of the Arkansas Statutes, provides that the magistrate before whom the offense is charged shall state the charge to the defendant and inquire whether he

desires the aid of counsel, and shall allow a reasonable opportunity for procuring it. (P. 4 & 5)

The decision of the Supreme Court of Arkansas in the instant case is clearly in conflict with the opinions of this Court in *Payne vs. Arkansas*, 356 U. S. 560 at page 563; and *Mallory vs. United States*, 354 U. S. 449, at page 455-456.

The question of whether these Arkansas Statutes are to be complied with, or whether they are to be ignored or side-stepped, should be definitely decided by this Court so that there can be no question hereafter as to their true meaning and intent.

III.

The illegal conduct of the police, subsequent to the first alleged confession of the Petitioner in the instant case, is relevant to cast light upon their attitude at the time of his original questioning, *Haley vs. Ohio*, 332, U. S. 596.

The opinion of the lower court in the instant case, with reference to the admissibility of Petitioner's alleged confessions, is contrary to the opinion of this Court in *Rick vs. Pate*, 367 U. S. 433, at page 144.

CONCLUSION

For the foregoing reasons this petition for Writ of Certiorari should be granted.

Respectfully submitted,

JACK HOLT, SR.
115 North State Street
Little Rock, Arkansas
Attorney for Petitioner

APPENDIX

SUPREME COURT OF ARKANSAS

No. 5051

JOHN HOLLMAN, Appellant

vs.

STATE OF ARKANSAS, Appellee

Opinion delivered November 5, 1962.

Appeal from Pulaski Circuit Court, First Division, William J. Kirby, Judge. Affirmed.

GEORGE ROSE SMITH, Associate Justice

GEORGE ROSE SMITH, J. Upon trial without a jury the appellant, John Hollman, was found guilty of having knowingly received stolen property (ten chain saws), and was sentenced to imprisonment for ten years. For reversal he contends that his confession of the crime was involuntary and that its introduction in evidence by the State violated his rights under the due process clause of the Fourteenth Amendment.

The ten saws in question were stolen from Timberland Saw Company on October 27, 1958. Hollman was picked up by the police on the same day, without a warrant for his arrest, and was questioned about the theft. He denied any knowledge of the matter. After an hour or two of questioning he was released.

A day or two later Jerome Wells was taken into custody and confessed that he had stolen the saws and had disposed of them through Hollman. On October 30

Hollman was arrested a second time, without a warrant. The testimony of the investigating officers does not specify the date on which Hollman was questioned, but apparently it was immediately after his arrest on October 30. The trial court was certainly justified in so finding.

According to the two officers Hollman was questioned in the presence of Jerome Wells, who again confessed his own guilt and implicated Hollman. The officers say that Hollman voluntarily admitted that he received the saws from Wells, knowing them to be stolen property, and sold them for $300. Hollman testified that during the questioning Wells was "all swolled up" and appeared to have been whipped. Hollman states that the officers exhibited blackjacks, forced him to make a false confession by threatening him with the same treatment that Wells had received, and refused to allow him to telephone an attorney. Both officers deny that any force or threats were used and deny that Hollman asked to be allowed to call a lawyer.

With the testimony in direct conflict the trial court was at liberty to accept the officers' version of the matter and to find that the confession was voluntarily given. The fact that Hollman was "uncounseled and illegally detained" does not render his confession inadmissible. *Stein vs. New York*, 346 U. S. 156.

Many of the appellant's complaints relate to matters that occurred after the confession to the officers on October 30. During the next six days Hollman was kept in confinement while the police investigated other thefts that apparently were disclosed either by Wells or by Hollman. A total of some thirty stolen chain saws were recovered in the course of the investigation. On or about November

5 Hollman was interviewed by the prosecuting attorney and again confessed his guilt. This confession seems to have been reduced to writing, but it was not introduced at the trial. The information was filed by the prosecuting attorney on November 5, and thereafter the accused was released on bond.

We are not convinced that Hollman's confession, if voluntarily made, was rendered inadmissible by later events. It is established by the proof that he was confined until November 5 without a formal charge having been lodged against him. It is also true that the arresting officers did not take him before a magistrate as the statute requires, Ark. Stats. 1947, § 43-601, but this omission did not invalidate the confession. *State vs. Browning*, 206 Ark. 791, 178 S. W. 2d 77. Whether Hollman was denied an opportunity to call a lawyer was a disputed issue of fact which the trial court could resolve against the accused. Nor was the court compelled to accept Hollman's testimony, uncorroborated and apparently based on hearsay, that members of his family were not allowed to visit him.

It is clear enough that subsequent illegal conduct on the part of the police is relevant when it casts light upon their attitude at the time of the original questioning of the accused. *Haley vs. Ohio*, 332 U. S. 596. Here, however, we do not perceive that the later events have any tendency to support Hollman's testimony that the officers displayed their blackjacks and threatened him with physical abuse. The case is not dissimilar in principle to *United States vs. Mitchell*, 322 U. S. 65, where the accused was illegally detained for eight days while the police investigated other tehfts that had been disclosed by his initial voluntary confession. Even though that case was tried in

a federal district court, where the governing rules are more strict than those that are applicable to state procedure under the Fourteenth Amendment, the court held that the admissibility of the confession was not affected by the later occurrences. In the course of the opinion it was noted that "the illegality of Mitchell's detention does not retroactively change the circumstances under which he made the disclosures". We are of the same view in the case at bar.

Affirmed.

IN THE SUPREME COURT OF ARKANSAS

OCTOBER TERM 1962 NOVEMBER 5, 1962

JOHN HOLLMAN APPELLANT

VS. Appeal From Pulaski Circuit Court, First Division

THE STATE OF ARKANSAS APPELLEE

JUDGMENT

This cause came on to be heard upon the transcript of the record of the Circuit Court of Pulaski County, First Division, and was argued by counsel; on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said Circuit Court in this cause.

It is, therefore, considered by the Court that the judgment of said Circuit Court in this cause rendered be, and the same is hereby, in all things affirmed with costs, and that unless appellant shall, forthwith, surrender himself to the Supreme Court in execution of said judgment, his bond be declared as forfeited.

It is further considered that said appellee recover of said appellant all her costs in this Court, in this cause expended, and have execution thereof.

November 5, 1962

IN THE SUPREME COURT OF ARKANSAS

JOHN HOLLMAN APPELLANT

VS. Criminal No. 5051

THE STATE OF ARKANSAS APPELLEE

APPELLANT'S PETITION & BRIEF FOR REHEARING

Appellant, for his Petition and Brief herein, states:

(1) The facts, and the law governing, in the case of *Stein vs. New York*, 346 U. S. 156, followed by this Court in its opinion of November 5, 1962, are entirely foreign to the facts, and law applicable here, and the Court erred in applying it to the instant case. In *Stein vs. New York, supra*, the defendants did not take the stand to deny the statement of the officers, and the circumstances they offered to show coercion were weak and unpersuasive and were supported only by inference. In the case at bar the same illegal practice was followed by the police from the first arrest and alleged confession to the second alleged confession.

(2) The case of *United States vs. Mitchell*, 322 U. S. 65, cited by the Court, in its opinion is not in point. In the instant case appellant did not tell the police of various stolen items they would find, nor did he admit he was connected in any manner with these other items or point out to them where they could be found, and later events cast a great deal of light upon the attitude of the police

at the time of the original questioning of appellant. (The circumstances surrounding appellant's alleged first confession are clearly dissimilar to the quick, voluntary confession of the defendant in the Mitchell case.)

(3) The judgment of the lower court, and its affirmance by this Court, violates appellant's rights under the Due Process Clause of the 14th Amendment to the Constitution of the United States; Section 8 of Article 2 of the Constitution of the State of Arkansas; and Sections 43-601 and 43-605 of the Arkansas Statutes, Annotated.

WHEREFORE, Appellant, John Hollman, prays that a rehearing be granted in this cause.

JACK HOLT, SR.,
Attorney for Appellant

CERTIFICATE

STATE OF ARKANSAS)
)
COUNTY OF PULASKI)

I, JACK HOLT, SR., attorney for the appellant herein, on oath, state:

I verily believe there is merit in the foregoing Petition and it is not for the purpose of delay.

WITNESS my hand this — day of ————, 1962.

————————————
JACK HOLT, SR

Subscribed and sworn to before me this — day of ————, 1962.

NOTARY PUBLIC

My Commission Expires:

IN THE SUPREME COURT OF ARKANSAS

OCTOBER TERM 1962

Proceedings of December 3, 1962

JOHN HOLLMAN APPELLANT

VS. No. 5051

THE STATE OF ARKANSAS APPELLEE

ORDER

Rehearing denied December 3, 1962.